

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO: 15-CR-4268 JB

ANGEL DELEON, et al.,

Defendants.

**REPLY TO UNITED STATES' SEALED RESPONSE TO DEFENDANT
CHRISTOPHER GARCIA'S MOTION FOR ORDER TO SHOW CAUSE FOR NON-
COMPLIANCE OF DISTRICT COURT ORDERS DURING MAY 9-10, 2017
HEARINGS (DOC. 1329)¹**

Defendants Christopher Garcia through co-counsel, Amy Sirignano of the Law Office of Amy Sirignano, PC and Christopher W. Adams of the Law Office of Christopher W. Adams, Edward Troup, through co-counsel Cori Harbor-Valdez, and Patrick Burke, Joe Gallegos, through co-counsel Brock Benjamin and Rick Sindel, Atruro Arnulfo Garcia, through co-counsel Billy Blackburn, and Scott Davidson, Andrew Gallegos, through co-counsel Donavon Roberts, and Chris Chavez, through co-counsel John Granberg, and Orlando Mondragon, Rudy Perez, through co-counsel Ryan Villa, and Justine Fox-Young, Carlos Herrera, through co-counsel Michael Davis,

¹ The Court conducted hearings in this matter during May 9, 10, and 11, 2017. The Court ordered the government to provide certain materials only during the first two (2) days (Docs. 1160, 1161).

and Carey Bahalla, Anthony Ray Baca, through co-counsel Teresa Duncan, and Marc Lowry, and Daniel Sanchez through co-counsel Amy Jacks and Richard Jewkes, in reply to government's response (Doc. 1401), states the following:

On October 13, 2017, Mr. Garcia and multiple joining defendants filed Defendants' Motion for Order to Show Cause for Non-Compliance of District Court Orders During May 9-10, 2017 Hearings (Doc. 1329). This Motion requested the Court issue an Order to Show Cause to ascertain why the government has yet to comply with the Court's oral orders during the May 9-10, 2017 hearings.

On November 3, 2017, the government filed United States' Sealed Response to Defendant Christopher Garcia's Motion for Order to Show Cause for Non-Compliance of District Court Orders During May 9-10, 2017 Hearings (Doc. 1329). Doc. 1401.

On November 8 -9, 2017, during the hearings before the Court, the government orally agreed to disclose additional documents. As set forth below, defendants continue to require disclosure of documents the Court ordered the government to disclose at the May 9-10, 2017 hearings. Those documents are listed as follows:

- Preserve law enforcement rough interview notes (Tr. 5/9/17, 236:1-18). The government "admonished its agents and task force officers to preserve their notes and will continue to do so." Doc. 1402.
- Provide written response regarding 10 discs observed but not reviewed during SNMCF evidence viewing within 10 days including Bates numbers if already

produced. If new evidence, produce within 14 days. (Tr. 5/9/17, 241:2-6, 241:16-22). The United States “agrees to provide the written correspondence with the results from the reviewed discs and disseminate it to all defense counsel.” Doc. 1402

- Provide written confirmation that no additional physical evidence exists within 10 days, not to be construed as ground for exclusion (Tr. 5/9/17, 246:15-25, 249:20-25). The government is taking the position that on June 6, 2017, June 7, 2017, defense counsel for Rudy Sanchez, Mario Rodriguez and Carlos Herrera were permitted to tour the Penitentiary of NM and Southern NM Correctional Facility and were also permitted to view, handle and measure the physical evidence. All defense counsel did not obtain written confirmation from the government that no additional physical evidence exists.

- Defense granted permission to handle physical evidence in presence of non-party NMSP evidence tech (Tr. 5/9/17, 250:12-22, 252:20-25). Not all defense counsel were given that opportunity yet.

- AUSA Beck agrees to provide date of Perez/Cordova recording redacted from the transcript (Tr. 5/9/17, 262:13-20). The government confirmed with the FBI that some of the transcripts do not have dates is because the CHSs did not always provide a date or time for the recording. The defendants position is to request the government to further confer with the FBI and their CHSs and demand them to produce dates and estimated times of each recording that was transcribed.

- AUSA Armijo agrees to produce any transcripts not otherwise disclosed within 10 days (Tr. 5/9/17, 264:5-6, 265:1-4). The government responded that it disclosed all transcripts (8 of 11) that were transcribed. Doc. 1401.
- Review/Disclose Brady, Giglio, Rule 16 notes of CHS law enforcement handlers within 14 days (Tr. 5/10/17, 4:17-20, 5:25, 6:1-2). The government acknowledged that law enforcement notes may implicate its obligations under *Jencks* and will continue to admonish the Agents and Task Force Officers to preserve their notes taken during debriefs with CHSs. Doc. 1401.
- Review/Disclose Brady, Giglio, Rule 16 of documentation/correspondence between FBI, STIU, and NMCD regarding Billy Cordova and the possession of contraband such as phones and recording devices within 14 days (Tr. 5/10/17, 6:9-15, 10:1-11). The government provided that it does not have any formal documentation *in its possession* regarding Billy Cordova's possession of contraband within the NM Corrections Department. The NM Department of Corrections is part of the task force and investigative team, and pursuant to Rule 16, these documents, if they exist, should be provided to the defense.
- AUSA Beck agrees that if the government obtains it, the government will produce NMCD's internal affairs investigation to attorneys Nate Chambers, and Cori Harbor-Valdez (Tr. 5/10/17, 48:3-8, 49:20-24, 50:2). The government produced these records on JUNE 16, 2017.

- Review/Disclose Brady, Giglio, Rule 16 grand jury transcripts related to Counts 4 & 5 (Tr. 5/10/17, 94:17-25, 105:2-8). The government agreed to re-review the grand jury transcripts related to Counts 4 and 5 for *Brady*, *Giglio*, or Rule 16 evidence. Doc. 1401.

- AUSA Beck agrees, and Judge Browning orders disclosure of specific informant medical/psych records for Teri and Marc (Tr. 5/10/17, 146:3-9). The Court ordered these materials during the hearings, and a written order was entered during the last week.

- AUSA Beck agrees to produce defendant Baca's prison calls and visitor logs at the Dona Ana County Detention Center from 2/1/2015 – 9/14/2016 (Tr. 5/10/17, 146:11-14, 147:3-4). The government produced thousands of jail calls during the week of November 13, 2017, however, it stated, "Baca will need to subpoena the Dona Ana County Detention Center directly for "jail calls" while Defendant Baca was in the custody of the U.S. Marshals Service." Doc. 1401.

- AUSA Beck agrees to send letters to Teresa Duncan, Justine Fox-Young, and the Court regarding whether the CHSs' recording devices contained metadata (Tr. 5/10/17 153:3-8, 153:23). While the government confirmed metadata on the devices, and agreed to that request, we have not yet received any written correspondence. Doc. 1401.

- AUSA Beck agrees to produce photographs from cell phones that the government provided to informants, if in the possession of the government (Tr. 5/10/17 154:20-25, 155:1-8). The government has conditioned its response to photographs from the forensic examinations/extractions performed on the cellphones *in the government's possession*, which were provided to informants." See Doc. 1401. Defense counsel continues to demand the examination and extraction reports of all phones given to all cooperating informants/CHSs, including the phones that, with the exercise of due diligence, can be brought into the government's possession. Rule 16 requires such inquiry and due diligence.

- AUSA Beck agrees to permit defense experts conduct physical review of cell phones in the possession of the government or put in writing that the phones are not in the government's possession (Tr. 5/10/17, 155:11-21). During the November 8-9 hearings, the defense provided the government with an oral list of the cellular phones and digital ELSUR devices it would like to have its defense expert examine and review. The parties will meet and confer and agree to a time when the defense expert is available.

- Review/Disclose Brady, Giglio, and Rule 16 evidence regarding NMCD Secretary Marcantel's statements to A&E Rookie of the Year or NMCD following the Molina murder and Anthony Baca's move out of the state (Tr. 5/10/17, 163:7-14). Government to provide whether the statements were recorded by NMCD. AUSA Beck

agrees to confer with NMCD regarding whether NMCD recorded the statements and let Theresa Duncan know (*Id.* at 167:1-8). The government states that it has provided “the video of Secretary Marcantel addressing inmates at Southern New Mexico Correctional Facility after the murder of J.M.” Doc. 1401. However, it did not respond regarding any videos/statements made by Secretary Marcantel to A&E Rookie of the Year. *Id.*

For these reasons, Mr. Garcia and co-defendants respectfully request the Court order the government to disclose the above-requested information ordered by the Court during the May 9-10, 2017 hearings.

Respectfully submitted,

/s

Amy Sirignano, Esq.
Law Office of Amy Sirignano, PC
5901J Wyoming Blvd. NE #250
Albuquerque, NM 87109
(505) 242-2770
Fax: (505) 242-2774
Email: amy@abqnmLaw.com

Christopher W. Adams
The Law Office of Christopher W. Adams, PC
102 Broad Street, Suite C
Charleston, SC 29401
(843) 577-2153
Fax: (877) 883-9114
Email: chris@chrisadamsLaw.com

Co-counsel for Christopher Garcia

/s

Cori Ann Harbour-Valdez
The Harbour Law Firm, PC
PO Box 13268
El Paso, TX 79913
915-544-7600
Fax: 915-975-8036
Email: cori@harbourlaw.net

_____/s
Patrick J. Burke
Patrick J. Burke, PC
999 18th Street, Suite 2055
Denver, CO 80202
303-825-3050
Fax: 303-825-2992
Email: patrick-j-burke@msn.com

Co-counsel for Edward Troup

_____/s
Brock Benjamin
Benjamin Law Firm
747 E. San Antonio, Suite 203
El Paso, TX 79901
(915) 412-5858
Fax: (915) 503-2224
Email: brock@brockmorganbenjamin.com

_____/s
Richard Sindel
Sindel, Sindel & Noble, P.C.
8000 Maryland Avenue, Suite 350
Clayton, MO 63105
(314) 721-6040
Fax: (314) 721-8545
Email: rsindel@sindellaw.com

Co-counsel for Joe Lawrence Gallegos

_____/s_____
Billy R. Blackburn
1011 Lomas Blvd. NW
Albuquerque, NM 87102
505-242-1600
Fax: 505-243-6279
Email: Billy@BBlackburnlaw.com

_____/s_____
Scott Moran Davidson
1011 Lomas Boulevard NW
Albuquerque, NM 87102
505-255-9084
Fax: 505-243-6279
Email: scott@justappeals.net

Co-counsel Arturo Arnulfo Garcia

_____/s_____
Donavon A. Roberts
PO Box 36344
Albuquerque, NM 87176-6344
505-506-3749
Fax: 505-503-8405
Email: ladar170@aim.com

Counsel for Andrew Gallegos

_____/s_____
Orlando Mondragon
1028 Rio Grande
El Paso, TX 79902
915-566-8181
Fax: 915-566-9696
Email: mondragonom@gmail.com

_____/s_____
John L. Granberg
Granberg Law Office
310 N. Mesa Suite 424

El Paso, TX 79901
915-543-9000
Fax: 915-543-3201
Email: granberglawoffice@yahoo.com

Co-counsel for Christopher Chavez

_____/s_____
Justine Fox-Young
1903 Wyoming Blvd. NE Ste. B
Albuquerque, NM 87112
Phone: 505-796-8268
Email: justine@foxyounglaw.com

_____/s_____
Ryan J Villa
2501 Rio Grande Blvd NW Suite A
Albuquerque, NM 87104
(505) 639-5709
Fax: 505-433-5812
Email: ryan@rjvlawfirm.com

Co-counsel for Rudy Perez

_____/s_____
Michael V Davis
Michael V. Davis, Attorney & Counselor at
Law, P.C.
Post Office Box 3748, 3949 Corrales Road, Suite
130
Corrales, NM 87048
(505) 242-5979
Fax: 505-899-3103
Email: mdavis@swcp.com

_____/s_____
Carey Corlew Bhalla
Law Office of Carey C. Bhalla LLC
925 Luna Cir NW

Albuquerque, NM 87102
Phone: 505-508-5589
Email: carey@bhallalaw.com

Co-counsel for Carlos Herrera

_____/s_____
Marc M Lowry
Rothstein Donatelli LLP
500 4th Street N.W. Suite 400
Albuquerque, NM 87102
(505) 243-1443
Fax: (505) 242-7845
Email: mlowry@rothsteinlaw.com

_____/s_____
Theresa M Duncan
Duncan Earnest LLC
515 Granite NW
Albuquerque, NM 87102
505-842-5196
Fax: 505-750-9780
Email: teri@duncanearnest.com

Co-counsel for Anthony Ray Baca

_____/s_____
Amy E. Jacks
Law Office of Amy E. Jacks
315 E. 8th St.
#801
Los Angeles, CA 90014
213-489-9025
Fax: 213-489-9027
Email: amyejacks@sbcglobal.net

_____/s
Richard Jewkes
Richard Jewkes
701 N. Saint Vrain St
El Paso, TX 79902
(915) 534-7400
Fax: (915)534-7407
Email: richardjewkes@sbcglobal.net

Co-counsel for Daniel Sanchez

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was sent via the Court's CM/ECF system to opposing counsel, AUSAs Maria Armijo, Randy Castellano, and Matthew Beck, this 17th day of October 2017.

_____/s
Amy Sirignano, Esq.